Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	MM Docket No. 99-25
Creation of a Low Power Radio Service	)	RM-9208
	)	RM-9242

To: The Commission

COMMENTS OF BIG CITY RADIO, INC.

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SUMMARY

The success of Big City Radio, Inc. confirms that radio can best serve the American public when it is free from objectionable interference and can take advantage of tested technological innovations quickly and efficiently. Because adoption of any of the *Notice*'s proposals for low power FM ("LPFM") radio will disrupt existing radio services and will preclude a smooth transition to digital radio, the Commission should not reject all pending LPFM proposals.

The *Notice* proposes the elimination of certain interference safeguards in order to create a number of classes of LPFM stations. Such action would contradict well-established Commission precedent that refuses to authorize even specific waivers of the Commission's interference safeguards unless the public interest benefits are both certain and compelling -- even if no actual interference would be created. In the case of LPFM, however, recent studies confirm that objectionable interference will result, and the proposal thus cannot be adopted.

Independently, LPFM cannot be adopted because it would preclude or seriously delay any transition of radio to digital broadcasting ("DAB"). Radio is the last major communications medium that has not begun its digital transition. Once substantial testing of various DAB systems is completed by the end of this year, the Commission must be ready to obtain comment and select a DAB system that will not cause interference to existing analog signals while enabling a transition to digital. Any further consideration of LPFM at this time cannot but add obstacles and uncertainty to this already difficult technical challenge.

Finally, LPFM should not be adopted because its alleged benefits are too uncertain to justify the burdens the proposals would place on the FM band. The Commission cannot guarantee more diversity or localism simply through creating new LPFM services. Accordingly, the benefits of the proposal are not adequate to justify the clear harms, especially as, in the near future, the Commission may be able to expand the FM band to accommodate more radio stations without relaxation of established safeguards.

Because the *Notice*'s proposal would risk substantial damage to the public interest through interference and delay of digital radio, and may not even be necessary, the Commission should reject the proposal and terminate the proceeding.

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Big City Radio, Inc. ("Big City"), pursuant to Section 1.415 of the Commission's Rules, respectfully submits these comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding, which proposes the creation of a new tier of radio stations ("low power FM" or "LPFM"). 1/

The current success of radio is a result not only of sensible programming - programming that can attract individuals of many backgrounds and with many interests - but also of technical progress. Advancing technology - including innovations such as synchronized operations and better transmission techniques - has enabled stations to enhance service to their communities to the benefit of broadcasters and listeners alike.

1/ *Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released February 3, 1999) ("*Notice*"). The *Notice* proposes to create one, two or three new classes of LPFM stations, which would range in power from one to 1,000 watts, and would not be subject to third or, perhaps, second-adjacent spacing or interference requirements. Unless specificity is required, these comments will refer to all these classes of new FM stations as LPFM stations.

Big City is a testament to the benefits of such technical progress. The company, which has several Class A radio stations in the nation's largest markets, has relied on technical advancement to enable it to deliver better programming to its service areas. Its efforts have drawn more individuals to its stations (and to radio), and contributed to the current success of the radio industry.

But radio's success -- and its concomitant contribution to the public interest -- is not irreversible. Less than 20 years ago, radio was a struggling medium, plagued by low-quality signals, undesirable programming, and counterproductive regulations. 2/ Since that time, the Commission has recognized that radio cannot operate effectively as stand-alone broadcast outlets seeking to serve every audience with weak or problematic signals. With the assistance of Congress, the Commission enabled radio to take advantage of various efficiencies and new technologies, and the industry has responded. 3/ The result has been better radio for more Americans.

Now, the Commission again has the opportunity to enhance radio's ability to serve its communities and existing audiences. Extensive testing of digital audio

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2/ *See, e.g., Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992) (noting that, since 1984, "[t]he number of radio stations has continued to grow, as has the number of non-radio outlets, such as cable, that compete with radio broadcasters for audience and advertising. In addition, as a direct result of this tremendous market fragmentation, many participants in the radio business are experiencing serious economic stress. More than half of all commercial radio stations lost money in 1990, and small stations in particular have been operating near the margin of viability for years.")

3/ *See, e.g.* 47 U.S.C. § 202. The Commission already has used the availability of such efficiencies and technologies to justify creation of new competitors to radio -- such as satellite digital radio. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754 (¶ 32) (1997). Such actions cannot help but increase the pace of existing radio services to pursue further business or technical breakthroughs, so as to remain competitive.

broadcasting ("DAB") already has begun. Once such testing is complete, which is expected to occur before the year ends, the Commission, with all deliberate speed, must consider and adopt a DAB standard that both protects existing radio services and enables radio to enter the digital age. 4/ Unless radio can transmit digitally, it again will be at a competitive disadvantage, and will not be able to deliver to its listeners a signal comparable to that of the ever-increasing number of digital media, including the Internet and satellite digital radio. If radio cannot deliver a signal quality at least as good as its competitors, its role in U.S. life -- and the benefits it provides to the U.S public -- necessarily will diminish.

Accordingly, the Commission must launch and complete a DAB rulemaking proceeding before it approves any proposal to create many additional low power radio stations. LPFM implementation prior to DAB undeniably, and inexcusably, will delay any transition to digital radio to the detriment of the entire U.S. radio public. In addition, consideration of any LPFM proposal at this time would preclude alternate solutions that may eliminate any need to add to the existing congestion in the FM band. For example, advancements in GPS technology soon may make it possible to re-allocate some or all of aeronautical radionavigation bands, which lie just above existing FM spectrum. Moreover, any premature action on LPFM risks undermining the regulatory progress of the last 20 years, which has enabled radio to escape becoming a subpar, antiquated media.

4/ *See Amendment of Part 73 of the Commission's Rules to Permit the Introduction of Digital Audio Broadcasting in the AM and FM Broadcast Services, Petition for Rulemaking* (filed Oct. 7, 1998) ("*USADR DAB Petition*").

In light of such considerations, the Commission should not endorse any LPFM proposal at this time. The Commission has a fundamental obligation to safeguard radio spectrum from inefficient interference. It should not endanger the quality audio signal fundamental to radio's present success by adopting any proposal predicated on the elimination of second-adjacent interference safeguards simply to add to the programming diversity already available over the airwaves, on local cable access channels, or via the Internet. Neither should it obstruct the transition of radio into the digital age -- a transition that would benefit all U.S. radio listeners and that is increasingly critical to radio's fundamental ability to compete -- because of the uncertain possibility that still more radio stations may create more diverse radio ownership. Instead, the Commission should postpone consideration of any LPFM proposal until a means of digital audio broadcasting that will not create objectionable interference to existing radio services has been thoroughly tested and implemented.

I. APPROVAL OF LPFM AT THIS TIME WOULD RISK RADIO'S PRESENT ABILITY TO SERVE ITS LISTENERS

A. The Commission Should Not Approve Any Proposal That Imposes Substantial New Burdens On FM Spectrum Without A Compelling Showing of Public Benefit

The Communications Act dictates that the Commission has a "fundamental" responsibility to ensure "the effective and efficient use" of radio spectrum. 5/ Interference precludes such efficient use. Interference safeguards thus are not merely a matter of form, but are presumptively necessary to preserve the public interest benefits of radio.

5/ *Notice* at ¶ 21 (citing 47 U.S.C. §§ 151, 303(f) & (g)).

Accordingly, Commission precedent has established a clear policy of protecting established stations against the risk of objectionable spectrum congestion. 6/ In a number of proceedings, the Commission has refused to change technical requirements that might result in increased interference to existing or potential radio service. 7/ Indeed, a substantial body of Commission precedent has refused individual requests for waivers of interference safeguards -- despite promises to provide equivalent interference protection to all affected broadcasters and the extenuating circumstances of many such cases -- except when the public interest benefits of the proposed waiver are certain and "compelling." 8/

Moreover, a separate line of Commission precedent has confirmed that "micro" FM stations typically create too much interference for too little service gain or other public benefit. As early as 1978, the Commission recognized that an existing class of "micro" FM stations -- noncommercial Class D stations -- caused too much interference, served too small of service areas, and were generally too inefficient to be

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6/ *See, e.g.*, 47 C.F.R. §§ 73.207, 73.213 & 73.215.

7/ *See, e.g., Deregulation of Radio*, 84 FCC 2d 968, 977-78 (¶ 25) (1981) (refusing to relax technical requirements, lest the nation "see a return to that unregulated period prior to 1927 when chaos rode the air waves").

8/ Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Denver, Colorado), 46 RR 2d 1379 (1980). There, the Commission rejected a short-spaced proposal for a minority-owned radio station in Denver, noting that "to justify a waiver of the Commission's rules on mileage separation requirements, the showing of need must be compelling. . . . While the need for a minority station in Denver is no doubt genuine, it falls short of the justification for waiver of the magnitude of the short-spacing rules involved here." (citations omitted); *see also Quinnipiac College (WQAQ)*, 8 FCC Rcd 6285 (1993) (rejecting pleas of NCE-FM station to ignore spacing requirements despite "anomalous facts" and lack of interference).

consistent with the public interest. 9/ The Commission came to this conclusion despite unsubstantiated claims that such "micro" stations had "substantive value for enhancing the opportunity for minority ownership." 10/ In fact, the Commission specifically determined that continuation of "low power operations" that would limit "the opportunity for other, more efficient operations which could serve larger areas" were contrary to the public interest. 11/

. Consistent with such precedent and policy, and in light of the Commission's obligation to protect the established service and settled expectations of listeners, individual radio stations, and the radio industry as a whole, the Commission should reject any proposal to further crowd the FM spectrum with one or more new classes of "low power" radio outlets, unless the public benefit has been demonstrated to be great and the potential for increased interference has been field-tested and proven to be small. The proposal to create new LPFM services does not satisfy this standard.

B. The *Notice's* Proposal to Eliminate Second-Adjacent Channel Safeguards Threatens Substantial Interference

The Commission cannot eliminate second-adjacent channel protections for any class, new or old, of FM radio stations. Recent studies commissioned by the

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9/ *Order, Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (¶ 23) (1978) (noting that while such micro-service had some purpose, they could not survive the "question of efficient channel usage").

10/ *Id.* at ¶ 21.

11/ *Id.* at ¶ 24. The *Notice*, inexplicably, ignores such precedent when the Commission suggests that it wants to limit full power service in order to enable proposed LPFM services. *See Notice* at ¶ 50 (refusing to relax interference safeguards for any but LPFM stations, even if possible, as "existing broadcasters [would] move quickly to improve their own facilities.")

National Association of Broadcasters confirm that LPFM facilities of the sort suggested in the *Notice* would cause reduced signal quality to large numbers of radio listeners. For instance, persons who listen to clock or portable radios - in other words, a substantial percentage of the U.S. radio public - would face demonstrably increased interference were new LPFM stations to take advantage of the *Notice*'s proposal to eliminate second-adjacent channel interference restrictions.

In any event, the burden should not be on broadcasters to demonstrate the risks of the proposed service. Rather, the burden should be on proponents of the new LPFM service to demonstrate how the drop-in of hundreds of LPFM stations, including some in congested urban areas, would not reduce the overall quality of the FM band. To date, no such showing -- which at least would require actual testing of LPFM-like stations in every region of the country -- has been made.

Certainly, the *Notice* has not made such a showing. The *Notice* presented no studies detailing the increase in interference that would result should the proposal be adopted, even if it were assumed that every LPFM station operated per the letter of its authorization. 12/ Neither did the *Notice* cite extensive precedent in support of the proposal: only in cases involving an inherently limited class of stations -- such as grandfathered short-spaced stations -- or in circumstances in which the adversely affected station expressly consented to lesser safeguards -- has the Commission waived its critical safeguards against overcongested airwaves. 13/ Such limited

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12/ *See, e.g.,* Dissent of Commissioner Harold W. Furchtgott-Roth, *Notice*, at 1(noting that the Commission "made no effort to assess, much less quantify" what effect eliminating interference protections would have on existing radio service).

13/ *Cf. Report and Order, Grandfathered Short-Spaced FM Stations,* 12 FCC Rcd 11840, 11849 (¶¶ 27, 29) (1997). There, the Commission agreed with NAB that second

experiences are simply too unlike the open-ended LPFM proposal -- which may involve hundreds or even thousands of brand-new stations causing nonconsensual interference to existing full-power stations -- to justify its adoption.

The *Notice* also suffers from its failure to consider how LPFM stations may disrupt existing radio service that relies on unusual or innovative techniques -- including existing on-channel technologies -- to offer better radio. Big City, for example, uses synchronized operations to reduce areas of interference between its co-channel stations. The result is a broader service area, which enables better programming and a more efficient use of radio spectrum. The possibility of LPFM stations scattered throughout Big City's service areas poses a unique threat to such synchronized operations, or to other, existing on-channel technologies, like FM boosters, as such operations would appear more susceptible to near-channel interference. 14/

The *Notice*'s analysis is deficient not only with regard to actual technical and historical proof in support of the LPFM proposal, but also suffers from the bias inherent in its results-oriented presentation. The *Notice* itself admitted that its proposed limits were not ultimately based on detailed interference studies or reasonable estimates of the levels of protection needed by existing stations, but were simply ones

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and third-adjacent interference safeguards would be removed only for the limited group of grandfathered stations within the *Order*'s definition -- which were far less in number than the proposed LPFM stations could be.

14/ This concern also had made Big City initially reluctant to support DAB in-band, on-channel proposals, until it had been reassured that additional field testing of DAB IBOC would be conducted. Pending the results of such field tests, Big City is optimistic that some solution can be reached with regard to DAB IBOC and its innovative operations. In contrast, LPFM has not undergone sufficient field testing, and so should be rejected out-of-hand.

that would enable the largest number of LPFM stations to be implemented. 15/ Such back-to-front decision-making -- the Commission wants the result to be B, so it decides A -- casts inherent doubt on the logic and assumptions underlying the entire proposal. 16/

Regardless, any proposal to eliminate established second-adjacent channel protections cannot help but increase FM congestion and so reduce the ability of existing radio licensees to improve or adapt their service areas. Such loss of flexibility is itself a threat to the present success of radio. Existing broadcasters already have made every effort to serve as many persons as possible. 17/ As a result, use of radio spectrum nears capacity in many locales. Even now, these existing levels of congestion can pose a problem for a station which, for example, has to adapt to a loss of its transmitter site but does not want to deprive audiences within its established

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15/ *See Notice* at ¶ 50.

16/ Such lack of analysis is particularly troubling with regard to third-adjacent interference issues. It is not clear whether third-adjacent protections, unlike second-adjacent channel protections, are required in today's broadcasting environment. If such third-adjacent requirements are no longer necessary, however, the Commission does a great disservice to the U.S. public and all of radio to remove such limitations only for a proposed new set of FM stations. Basic fairness -- as well as recognition of the public service existing radio stations already provide -- demands that if the Commission eliminate third-adjacent channel interference requirements for any new group of radio stations, it eliminates them for all existing radio stations. In fact, to the extent the Commission's experience with grandfathered short-spaced stations may be read to support elimination of third-adjacent channel safeguards for LPFM stations, it also must be read to support elimination of such protections for all full power stations, as such grandfathered stations were, of course, full power stations. Accordingly, it would inappropriate and publicly detrimental for the Commission to preserve an outdated interference protection only in order to enable it to "find" more spectrum for a privileged class of new radio operators.

17/ *See Notice* at ¶ 50 .

service areas. The addition of LPFM stations to such congested airwaves will make it more difficult, if not impossible, for every full power station that loses its transmitter site to obtain an acceptable alternate site. This unavoidable loss of flexibility is alone sufficient reason to postpone or reject any consideration of LPFM stations at this time.

C. That the Commission Is Unlikely to be Able to Remedy Any LPFM Interference Promptly Also Justifies Rejection of the Proposal

The Commission has no reason to expect that new LPFM operators will have the resources, the expertise, or the interest necessary to cure any interference -- whether caused by terrain, improper operations or other problems -- speedily and voluntarily. The Commission has witnessed many instances in which a full power or secondary operator has been unwilling or unable to take the necessary steps to cure objectionable interference. Accordingly, before the Commission can consider any LPFM proposal, it should determine how it can compel elimination of LPFM-induced interference without significant disruption to the public's existing access to radio.

Even under current conditions, the Commission has experienced difficulty resolving interference complaints promptly. Introduction of new LPFM stations (and inexperienced LPFM operators) cannot help but add to the complaints. As each additional complaint creates further delay in resolving existing complaints, a flood of new complaints will result in longer delays across the board, as the Commission's limited enforcement staff will find it harder and harder to focus sufficient resources to resolve any particular case of interference.

The Commission already has recognized that it would be impractical for it to monitor public interest programming and minimum operating hours with regard to

many LPFM stations. 18/ However, it cannot abdicate its obligation to monitor and remedy interference. The Commission should not implement LPFM until it is able to eliminate all actual interference promptly. Otherwise, the proposal is sure to increase interference far beyond even that noted in any interference study, and is even more likely to cause substantial injury to U.S. radio listenership.

II. THE INCREASINGLY URGENT NEED FOR DIGITAL RADIO INDEPENDENTLY REQUIRES REJECTION OF LPFM AT THIS TIME.

A. Radio Cannot Risk Further Delay to Any DAB Transition.

Big City consistently has urged the Commission not to take premature action on DAB -- in other words, action on any proposal before sufficient field testing has been completed. 19/ Although Big City is well aware of the many benefits digital radio would convey to U.S. radio audiences, it still would be reluctant to endorse any proposal that would interpose new signals near existing radio stations' operations -- whether DAB IBOC or LPFM -- that has not had the benefit of sufficient field testing.

Unlike LPFM, however, DAB IBOC proponents *have* embarked on a series of field tests of their proposed innovations. In fact, Big City has been reassured by proponents of digital systems that they intend to check the effect IBOC would have on existing radio operations in a variety of conditions during tests to be completed by the end of the year. In light of such testing, Big City is now cautiously optimistic that DAB IBOC operations can be structured in such a way as not to risk existing radio

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18/ *See Notice* at ¶¶ 72, 77.

19/ *See, e.g.*, Comments of Big City Radio, Inc. in response to *USADR DAB Petition* (filed December 23, 1998).

service. Assuming such optimism proves warranted, Big City looks forward to commenting on the competing DAB IBOC proposals, and urges the Commission to receive comments on such proposals upon the completion of such testing.

The LPFM proposal, in contrast, has not undergone any such extensive testing. Nor is there is clear, pressing need for LPFM services to be instituted before, rather than after, any DAB transition. As the Commission is aware, the exploding use of the Internet, the growing presence of digital cable, and the imminent arrival of satellite digital radio has, even in the span of the past several months, substantially quickened the need for radio to transition quickly to digital. As the economic viability of free, over-the-air radio depends on the quality of its audio signal, neither radio nor the Commission can afford to create new radio services that might further delay the advent of digital audio broadcasts.

B. Consideration of LPFM Prior to DAB Will Cause Dangerous Delay.

Any successful DAB IBOC system will involve the complicated task of creating digital side signals that are sufficiently strong as to be able to reach distant receivers but that do not interfere with analog or digital radio transmissions on adjacent channels. That the ultimate digital standard must be sufficiently robust to be used by all manner of stations in all manner of locales simply adds to the complexity.

The possibility of LPFM stations flooding the FM band prior to or in the midst of any DAB transition cannot help but add to the technical complications confronting DAB. It is simply not known at this time what direct impact a new LPFM station, free from traditional second adjacent channel restraints, may have on a full power station's digital signal. In light of such ignorance, prudence dictates that the

Commission fear the worst. Certainly, whatever preliminary studies may show, no party can or should assume that new FM congestion resulting from hundreds of new LPFM stations will not result in *actual* interference in the real world, especially in light of the insufficient field testing of LPFM proposals.

Commission precedent confirms that a new class of FM stations should not be added prior to any digital transition. Years before any digital television broadcast was required, the Commission froze applications for new television stations. 20/ A radio transition to digital may not require an absolute freeze, but it cannot be expected to adjust to the operations of hundreds of new stations without considerable problems or delay. Both common sense and past experience thus demonstrate that any LPFM proposal should be considered only after the transition to DAB is complete.

Moreover, implementation of DAB and consideration of LPFM each requires the full attention of the Commission's Mass Media Bureau. Each would involve new questions of policy and issues that could significantly affect, for good or ill, the future success of radio in the United States. In addition to the frightening new possibilities of interference (among existing analog, new digital and proposed LPFM stations), the Commission would have to devote thousands of staff hours developing new software for LPFM applications, counseling new LPFM applicants, and providing other general assistance simply in order to get new LPFM stations ready for

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20/ *See Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 10968, 10992-93 (1996) ("To continue to accept new applications for NTSC stations, now that we are approaching the actual start of this new service, could potentially prolong the transition process.")

construction. 21/ Whatever the Commission's intentions, such expenditures of Commission resources on LPFM will delay any DAB transition. In light of the clear benefits that DAB offers to the *entire* American listening public, the Commission must assist in the successful implementation of DAB first, and determine whether to adopt LPFM only thereafter.

III. THE COMMISSION SHOULD NOT RUSH ACTION ON LPFM, ESPECIALLY AS OTHER SOLUTIONS MAY BE AVAILABLE

As noted, established Commission policy and precedent requires any proposal that could risk a measurable increase in interference to provide an overwhelming net benefit to the public interest. Adoption of the LPFM proposal, at this time, would interfere with the present success of radio, and may make it effectively impossible for the Commission to resolve interference between full and low power radio stations in any sort of timely manner. It also would reduce substantially the chances of a successful transition to the digital terrestrial radio, a transition which is critical to radio's ability to compete in the imminent future. In short, any LPFM proposal suffers from definite and substantial negatives.

More important, LPFM should be postponed because such delay may enable new radio stations to come on the air without imposing additional burdens on the existing FM band. In the near future, the Commission may be able to open new frequencies to radio stations, both above and below the current FM frequencies, without

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21/ *See Notice* at ¶¶ 95, 98. For instance, the Commission has been working for many months to complete call sign software of seemingly less complexity than that proposed for new LPFM stations. *See 1998 Biennial Regulatory Review -- Amendment of Parts 73 and 74 Relating to Call Sign Assignments for Broadcast Stations*, 63 FR 71601 (December 16, 1998).

endangering existing radio services. For example, the aeronautical radionavigation band that lies just above the FM band is becoming increasingly obsolete because of GPS, which greatly reduces the need for the VHF omni-range navigation ("VOR") signals that have occupied the frequencies immediately above 108 MHz. In addition, advancing tuner technology has resulted in many receivers being able to reach as low as 87.7 MHz -- or at least two channels below the current minimum on the radio dial. To the extent the Commission is able to free use of Channel 6 during the digital television transition, it should be able to re-allocate these frequencies to additional radio stations with a minimum of difficulty (and presumably, with a minimum of risk of objectionable interference to more powerful television signals). A general transition to digital radio also may enable the Commission to require noncommercial radio stations to carry certain local information on its digital subcarrier. Any of these solutions would not require a sweeping waiver of existing interference protections that would risk harm to all of FM radio, which can only benefit U.S. radio listeners.

But the current LPFM proposal may be untimely for another reason: the additional programming outlets it proposes appear *less* necessary now than at any other time in history. Not only does radio remain a source of diverse programming, but technology has opened and continues to open new venues of expression. As Chairman Kennard has noted, "Broadcast.com, and RealNetworks, and Spinner.com aren't just Internet companies, they're also broadcasters." 22/ And the Internet is not

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22/ *See* Speech to the National Association of Broadcasters (April 20, 1999). That the Internet may not be as ubiquitous or mobile as radio -- *see Notice* at ¶ 12 -- does not mean it cannot provide an outlet for substantial community programming. After all, most persons cannot, for a variety of reasons, listen to the radio all day; likewise, the Commission cannot fail to consider the Internet a significant means of communications

just available to radio broadcasters, but to any individual willing to develop programming. Similarly, local access cable channels and e-mail newsgroups offer more possibilities for diverse programming and dissemination of an individual's viewpoints than ever before. Accordingly, consideration of any LPFM proposal is not only untimely, but also may be insufficiently useful to justify the heavy burdens it will impose on limited electromagnetic spectrum.

If the Commission intends to authorize LPFM stations to air advertisements, the alleged benefits of the proposal become even more dubious. First, by authorizing advertising, the Commission cannot help but deem such LPFM stations commercial. If such stations are commercial, the Commission is required to auction their initial permits pursuant to the terms of the Communications Act. 23/ If the permits are auctioned, the Commission has no guarantee that any particular individual will acquire such stations. In any event, the Commission has no guarantee that many new LPFM operators will choose to do anything other than to duplicate existing programming, or to air programming of interest to no one but the operator. Neither does the Commission have any ability to regulate speculation in the sale of LPFM

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simply because most persons do not have round-the-clock access to a particular web site.

23/ Even though LPFM stations did not exist at the time the Telecommunications Act was enacted, they would be subject to the plain language of the Act. Certainly, the Commission has exercised authority over many forms of communications that did not exist in 1934 pursuant to a statute that did not always address such new technical developments. To read the Act otherwise in this instance would risk the authority of the Commission with regard to all future technical developments or to communications media that did not exist in 1996.

stations or construction permits, 24/ which means that even initially "useful" stations quickly may be transformed into additional outlets airing the same programming and targeting the same audiences as existing stations. Such uncertainty as to the primary alleged benefit of the proposal only underscores that any LPFM proposal should not be considered at this time.

IV. WHENEVER THE COMMISSION ULTIMATELY CONSIDERS LPFM, IT MUST ENSURE THAT SUCH STATIONS SERVE THE PUBLIC INTEREST

A. All LPFM Stations Must Fulfill the Public Interest and Regulatory Requirements of Other Radio Stations

LPFM stations are radio stations. As radio stations, they must be obligated to uphold all the regulatory requirements of other radio stations. Such evenhanded treatment is not merely a matter of fairness, but of sound policy. A station that may preclude (or displace) a local FM translator must be obligated to carry the same EAS warnings that the translator would have carried. A station that is subject to any sort of ownership requirements must file and maintain an accurate and publicly available ownership report. A station that is intended to be the essence of a local station cannot be allowed to operate without a *local* public inspection file or a *local* main studio. A station that is to serve its public cannot risk that public's environment by being exempted from environmental requirements.

24/ *See, e.g., Notice* at ¶ 86. Contrary to the Commission's assertion, ownership regulations, without more, hardly limit the ability of a speculator to sell an LPFM station to various local persons -- such as the local department store or supermarket owner -- that can transform such stations into a means of private gain.

Moreover, as the Commission is well aware, the operation of a radio station is a privilege. Despite suggestions to the contrary, even a local, low power radio station cannot be said to justify its use of scarce radio spectrum by its mere existence. By requiring such stations to meet the most basic regulatory requirements of any radio station, the Commission confirms that it is not wasting spectrum on stations that do not benefit the public.

In any event, the Commission must provide a clear incentive to ensure that LPFM stations uphold the Commission's Rules regarding improper operations. Accordingly, any LPFM authorization must require the station to go silent immediately upon notification of actual interference to existing broadcast services. The fundamental purpose of LPFM is to supplement existing radio services, not to displace or disrupt existing radio stations; any LPFM station that is operating inconsistent with that purpose must suspend operations immediately until the problem is remedied. 25/ Such a hard-and-fast rule would encourage low power stations to operate according to the terms of their authorizations and to act promptly to cure any interference actually caused. Without a rule of this sort, LPFM interference -- which may be caused by accident, by negligence, or by intentional misoperation -- may continue to diminish local radio quality and diversity for months or years.

25/ Also on this basis, Big City agrees with other commenters that the Commission should grandfather existing FM translators and boosters with regard to LPFM stations, as an LPFM station should not be allowed to disrupt existing service. *See Notice* at ¶ 29; Comments of University of Northern Iowa at 1-3. Even LPFM proponents recognize the valuable services such translators and boosters provide. *See, e.g.*, Comments of WKJCE Radio at 6-7.

B. All LPFM Stations Must Be Noncommercial

As many proponents of LPFM service note, commercial operation of an LPFM station is contrary to the nature of the service. 26/ As important, substantial legal difficulties would preclude the authorization of any commercial LPFM station. For instance, under the Communications Act, commercial stations are required to be auctioned and to be subject to the ownership limits noted in the Act. To attempt to make such stations commercial and yet unfettered by such clear congressional directives would increase the risk of court action. 27/

Practically speaking, any possibility that such stations would be allowed to sell advertising would exacerbate the potential that such stations would interfere with

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26/ *See, e.g.*, Comments of John Bowker at 2-5 (noting that LPFM stations, which "should only be used to inform its more monolithic community of listeners," should not "compete with commercial radio," but should serve as an "institution to the local community"). Of course, the attempt of some LPFM proponents to re-define "noncommercial" to mean "non-profit with commercials" also must be rejected as facially inconsistent with all the Commission policy and precedent that has long separated the two categories of radio service.

27/ For instance, it becomes much harder to justify why congressional intent of promoting "commercial efficiencies in the radio broadcast industry" would apply to the common ownership of one or more commercial LPFM stations (or LPFM stations airing advertisements) and one or more full power stations any less than it would apply to the common ownership of two or more full power stations (one of which may very well have comparable service areas to a large LPFM station). *See Notice* at ¶ 59. The text of the Act confirms this reading, as it speaks of local ownership limits on "commercial radio stations." *See also Implementation of Sections 202(a) & 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996). Whether LPFM was on the mind of the Act's drafters or not, the phrase "commercial radio station" clearly governs independent, commercial LPFM stations. That this class of station did not exist at the time of the Act does not mean the Act does not apply; otherwise, the Commission would suggest it could take any action it chooses by simply creating a newly named broadcasting service. Moreover, precedent confirms that the Commission has managed to apply the Communications Act of 1934 to new forms of existing technology without claiming that the Act's bedrock principles -- such as alien ownership limitations -- should not apply. The Telecommunications Act of 1996 cannot be treated differently.

existing radio services. After all, an operator with a profit motive or who has promised various local businesses to achieve certain ratings would appear far more likely to risk interference to other stations than a noncommercial entity. Also, additional competition for advertising dollars may plunge a number of full power stations into financial difficulties and could return radio to the dark days of less than a decade ago, in which more than half of commercial radio stations were in the red. 28/

Accordingly, for both legal and practical reasons, no LPFM station can be authorized to be commercials or air advertisements.

C. All LPFM Stations Should Have a Distinct LPFM Call Sign.

As the *Notice* suggests, any LPFM station must have a distinctive call sign, and not simply a full power broadcast station call sign with an LP suffix. 29/ Such a distinctive call sign would enable the listening public to identify the station as a very local facility without any possibility of confusion. It also may help put listeners on notice that the LPFM's service area is limited because of the nature of the service, and not because of problems with their radio. 30/ Finally, a set of distinctive call signs would ensure that the current availability of the four-letter call signs used by full power stations would not be depleted by thousands of new stations. Accordingly, before any LPFM proposal is adopted, the Commission should establish a new set of LPFM call signs,

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28/ *See, e.g., Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992).

29/ *See Notice* at ¶ 88.

30/ *See, e.g.*, Comments of Texas Department of Transportation at 5-6 (noting the importance of distinctive calls for identifying "malfunctioning or interfering stations").

which should consist of the letters "NLP," 31 the station's three-digit FM channel, and some set number of letters.

D. No "Low Power" FM Station Should Have An ERP Above 100 Watts

No truly "low power" station can operate with an effective radiated power greater than 100 watts. In fact, many pro-LPFM parties implore the Commission not to create low power stations in excess of 100 watts, as such stations would preclude the construction of too many other stations to be consistent with the proposed service's diversity purposes. 32/ To the extent the Commission is committed to some sort of LPFM proposal, Big City agrees that 100 watts should be the highest possible ceiling for any potential LPFM stations, as such limited power would help to limit at least some interference caused by such stations and would better ensure fulfillment of LPFM's goals.

E. All Forms of LPFM Must Be Deemed Secondary Services

The Commission has proposed to designate at least certain LPFM stations as primary. Because such a designation would adversely affect the ability of full power stations to serve the American public, such a designation cannot be in the public interest.

Designation as a primary service would enable LPFM stations to disrupt or preclude changes in the operations of full power stations, including those that are

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31/ N is one of the three prefixes assigned to the United States by World Administrative Radio Committee. Use of N as the starting prefix would ensure that LPFM stations are not confused with full power services.

32/ *See, e.g.*, Comments of John Bowker at 6 (¶ 11); Comments of Texas Department of Transportation at 2-3.

compelled to abandon their transmitter site or that seek to enhance service to their communities. In the *Noncommercial Education FM Stations* proceeding, the Commission concluded that small stations do not provide efficient use of spectrum. 33/ Accordingly, the Commission 's own precedent demonstrates that LPFM stations cannot be allowed to block changes by full power stations that would provide more efficient and effective service to the U.S. public.

Similarly, the Commission cannot allow LPFM stations to block the re-location of a full power station that is forced off the air by the loss of its transmitter site - especially as the transition to digital television and increasing zoning pressure makes it harder and harder for radio stations to locate antenna sites. That the Commission hopes to mitigate the lost flexibility caused by any primary designation by designating only 1000-watt LPFMs as primary is not an adequate solution: even if only some low power stations are deemed primary, the result still would be to reduce the options that otherwise would be available to preserve or enhance a community's existing full power station. And such a primary designation cannot help but reduce the number of existing, albeit secondary, FM translators, either because a "primary" LPFM station actively displaces the translator or simply makes it impossible for the translator to locate an alternate transmission site when necessary.

33/ *Order, Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (¶ 23) (1978) (noting that while such micro-service had some purpose, they could not survive the "question of efficient channel usage").

Commission should not attempt to consider the negative and positive ramifications of any LPFM service until DAB has been implemented and LPFM at least has been field-tested in a number of regions.

For all the foregoing reasons, Big City asks that the Commission reject or refuse to consider any general LPFM proposal at this time.

Respectfully submitted,

BIG CITY FADIO, INC.

By: _____
Michael Kakoyiannis
President

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